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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

CASEY CLARKSON, on behalf of
himself and all other similarly situated

10 Plaintiff,

11 | V.

12 ALASKA AIRLINES, INC.,
HORIZON AIR INDUSTRIES, INC.
13 and ALASKA AIRLINES PENSION/
BENEFITS ADMINISTRATIVE
14 COMMITTEE.

15 | Defendants.

Case No. 2:19-cv-00005-TOR

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

**NOTED FOR HEARING:
AUGUST 4, 2020 AT 10:00 A.M.**

WITH ORAL ARGUMENT

TABLE OF CONTENTS

MOTION	1
BACKGROUND	2
ARGUMENT	3
I. The Classes are Objectively and Properly Defined	4
II. The Requirements of Rule 23(a) are Satisfied	5
A. The Classes are so Numerous that Joinder is Impracticable	5
B. There are Common Questions of Law and Fact	6
C. The Typicality Requirement of Rule 23(a) is Met	10
1. Plaintiff's Claims are Typical of the Classes	10
2. Defendants Assert No Unique Defenses Against Plaintiff.....	12
D. Plaintiff and his Counsel Will Adequately Represent the Classes	13
1. There is no Evidence of Conflict.....	13
2. Plaintiff will Vigorously Prosecute the Claims.....	14
3. Plaintiff's Counsel are More Than Adequate.....	15
III. The Claims Meet the Requirements of Rule 23(b)(3)	16
A. The Predominance Requirement is Met	16
B. The Superiority Requirement is Met	19
CONCLUSION	20

TABLE OF AUTHORITIES

Pages	
2	Cases
3	<i>Allen v. Hyland's Inc.</i> , 300 F.R.D. 643 (C.D. Cal. 2014)
4	15
5	<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997)
6	4
7	<i>Amgen Inc. v. Conn. Ret. Plans and Tr. Funds</i> , 568 U.S. 455 (2013)
8	4, 7, 17
9	<i>Armstrong v. Davis</i> , 275 F.3d 849 (9th Cir. 2001).....
10	11
11	<i>Baumann v. Chase Inv. Servs. Corp.</i> , 747 F.3d 1117 (9th Cir. 2014).....
12	15
13	<i>Briseno v. ConAgra Foods, Inc.</i> , 844 F.3d 1121 (9th Cir. 2017).....
14	4, 20
15	<i>Clarkson v. Alaska Airlines, Inc.</i> , No. 19-CV-0005, 2019 WL 2503957 (E.D. Wash. June 17, 2019)
16	2, 7, 11, 12
17	<i>Duffer v. United Cont'l Holdings, Inc.</i> , 173 F. Supp. 3d 689 (N.D. Ill. 2016)
18	8
19	<i>Hall v. L-3 Commc'ns Corp.</i> , No. 15 CV 00231, 2019 WL 3845460 (E.D. Wash. Aug. 2, 2019)
20	16
21	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998).....
22	13
23	<i>In re Online DVD-Rental Antitrust Litig.</i> , 779 F.3d 934 (9th Cir. 2015).....
24	13
25	<i>In re Visa Check/MasterMoney Antitrust Litig.</i> , 280 F.3d 124 (2d Cir. 2001).....
26	20
27	<i>Just Film, Inc. v. Buono</i> , 847 F.3d 1108 (9th Cir. 2017).....
28	11, 17

1	<i>McCluskey v. Trs. of Red Dot Corp. Employee Stock Ownership Plan & Tr.,</i> 268 F.R.D. 670 (W.D. Wash. 2010).....	6
2	<i>McGuire v. Dendreon Corp.,</i> 267 F.R.D. 690 (W.D. Wash. 2010).....	14
3		
4	<i>Messner v. Northshore U. HealthSystem,</i> 669 F.3d 802 (7th Cir. 2012).....	17
5		
6	<i>Mullins v. Direct Dig., LLC,</i> 795 F.3d 654 (7th Cir. 2015).....	20
7		
8	<i>Parsons v. Ryan,</i> 754 F.3d 657 (9th Cir. 2014).....	10, 11
9		
10	<i>Rodriguez v. Hayes,</i> 591 F.3d 1105 (9th Cir. 2010).....	12
11		
12	<i>Saucedo v. NW Mgmt. & Realty Servs., Inc.,</i> 290 F.R.D. 671 (E.D. Wash. 2013)	5
13		
14	<i>Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.,</i> 559 U.S. 393 (2010)	4
15		
16	<i>Staton v. Boeing Co.,</i> 327 F.3d 938 (9th Cir. 2003).....	13
17		
18	<i>Stockwell v. City and County of San Francisco,</i> 749 F.3d 1107 (9th Cir. 2014).....	7
19		
20	<i>Torres v. Mercer Canyons Inc.,</i> 835 F.3d 1125 (9th Cir. 2016).....	6
21		
22	<i>Torres v. Mercer Canyons, Inc.,</i> No. 14 CV 03032, 2015 WL 1641519 (E.D. Wash. Apr. 8, 2015)	11
23		
24	<i>Tyson Foods, Inc. v. Bouaphakeo</i> , 136 S. Ct. 1036, 1045 (2016)	16, 17
25		
26	<i>Vaquero v. Ashley Furniture Indus., Inc.,</i> 824 F.3d 1150 (9th Cir. 2016).....	7, 17
27		
28	<i>Walker v. Life Ins. Co. of the Sw.,</i> 953 F.3d 624 (9th Cir. 2020).....	17
29		

1	<i>Wal-Mart Stores, Inc. v. Dukes,</i> 564 U.S. 338 (2011)	7
2	<i>Waltermyer v. Aluminum Corp. of Am.,</i> 804 F.2d 821 (3d Cir. 1986).....	8
3	<i>Wang v. Chinese Daily News, Inc.,</i> 737 F.3d 538 (9th Cir. 2013).....	6
4	<i>Wilcox v. Swapp,</i> 330 F.R.D. 584 (E.D. Wash. 2019)	4, 10, 15
5	<i>Wolin v. Jaguar Land Rover N.A., LLC,</i> 617 F.3d 1168 (9th Cir. 2010).....	19

8 Other Authorities

9	<i>Newberg on Class Actions</i> § 3.58 (5th ed. 2011)	13
10	20 C.F.R. § 1002.150(b).....	7, 17
11	Fed. R. Civ. P. 23(a)(3).	10
12	Fed. R. Civ. P. 23(b)(3).	19
13	Fed. R. Civ. P. 23(g)(1)(A).....	15

INDEX OF EXHIBITS

Declaration of R. Joseph Barton with Block & Leviton LLP Firm Resume

Declaration of Vincent Cheng with the following attachments:¹

Exhibit 1: Excerpts of the Transcript of the Rule 30(b)(6) Deposition of Alaska Airlines, Inc. through its Designated Representative S. Elizabeth Ryan on May 5, 2020 (“Alaska Dep.”)

Exhibit 2: Excerpts of the Transcript of the Rule 30(b)(6) Deposition of Horizon Air Industries, Inc. through its Designated Representative Bernadette Davis on May 6, 2020 (“Horizon Dep.”).

Exhibit 3: Declaration of Elizabeth Ryan on Behalf of Alaska Airlines, Inc. in Response to Plaintiff's Rule 30(b)(6) Deposition Notice Topic Nos. 1, 7, and 11 that was provided in lieu of testimony at a deposition.

Exhibit 4: Declaration of Bernadette Davis on Behalf of Horizon Air Industries, Inc. in Response to Plaintiff's Rule 30(b)(6) Deposition Notice Topic Nos. 2, 5, 11, and 16 that was provided in lieu of testimony at a deposition.

¹ Unless otherwise indicated, all references to “Ex.” in numerals in the Motion are to the Exhibits to the Declaration of Vincent Cheng.

Exhibit 5: Plaintiff's March 2, 2020 Amended Notice of Deposition of Alaska Airlines, Inc. Pursuant to Rule 30(b)(6).

Exhibit 6: Plaintiff's March 2, 2020 Amended Notice of Deposition of Horizon Air Industries, Inc. Pursuant to Rule 30(b)(6).

Exhibit 7: Defendants' Second Amended Responses to Plaintiff's First Set of Interrogatories dated March 12, 2020.

Exhibit 8: Defendants' Second Amended Responses to Plaintiff's Second Set of Interrogatories dated April 10, 2020.

Exhibit 9: Defendants' Objections and Responses to Plaintiff's First Set of Requests for Production dated September 30, 2019

Exhibit 10: Defendants' Objections and Responses to Plaintiff's Second Set
of Requests for Production dated November 21, 2019

Exhibit 11: Excerpts of Collective Bargaining Agreement Between Horizon Air Pilot Group as Represented by the International Brotherhood of Teamster Local 1224 and Horizon Air Industries, Inc. Effective February 1, 2016 through December 31, 2024 bates-stamped ALASKA CLARKSON 0001638

Exhibit 12: Excerpts of the Association of Flight Attendants-CWA Horizon Air Flight Attendant Contract, May 1, 207 through January 18, 2019 (ALASKA CLARKSON 0003395)

Exhibit 13: Appendix G: Credit Matrix to the Collective Bargaining
Agreement Between Horizon Air Pilot Group as Represented
by the International Brotherhood of Teamster Local 1224 and
Horizon Air Industries, Inc. Effective February 1, 2016 through
December 31, 2024 and bates-stamped ALASKA_

Exhibit 14: Updated Credit Matrix, bates-stamped ALASKA_

Exhibit 15: Excerpts of 2007 Alaska Airlines Employee Benefits Handbook
for Management Employee (ALASKA_CLARKSON_
0016726)

Exhibit 16: Excerpts of 2017 Alaska Airlines Employee Benefits Handbook
for Management Employees (ALASKA_CLARKSON_
0016244)

Exhibit 17: Summary of Comparable Forms of Leaves Provided by Alaska Airlines to Employees – 2004 to Present

Exhibit 18: Summary of Comparable Forms of Leaves Provided by Horizon Air to Employees – 2004 to Present

Declaration of Casey Clarkson

Exhibit A: Email Thread dated June 11, 2017, bates-stamped

1 CLARKSON_002028

2 **Exhibit B:** Email Thread dated June 11, 2017, bates-stamped

3 ALASKA_CLARKSON_0004255-56

4 **Exhibit C:** October 4, 2017 Letter by Linda Jacobe Cole of the U.S.

5 Department of Labor to Horizon Air Industries, Inc., bates-

6 stamped CLARKSON_001607-09

7 **Exhibit D:** October 4, 2017 Letter by Linda Jacobe Cole of the U.S.

8 Department of Labor to Casey Clarkson, bates-stamped

9 CLARKSON_001605-06

10 **Exhibit E:** Duties of Class Representatives Form dated January 4, 2019

11 and signed by Casey Clarkson

12 **Declaration of Matthew Crotty**

13 **Declaration of Thomas Jarrard**

14 **Declaration of Peter Romer-Friedman**

15 **Declaration of Ming Siegel**

16 **Declaration of Michael Scimone**

MOTION

Pursuant to Rule 23(a) and (b)(3), Plaintiff moves the Court for an order:

1. Certifying Count IV on behalf of the Paid Leave Class and Counts I-III on behalf of the Virtual Credit Class:

Paid Leave Class: All current or former Alaska union-represented employees or Horizon employees who have taken short-term military leave from October 10, 2004 through the date of the judgment and current or former Alaska non-union employees who took short-term military leave between October 10, 2004 and December 31, 2017.

Virtual Credit Class: All current and former employees of Horizon or any subsidiary, joint venture, or division of Horizon who were subjected to Horizon’s “virtual credit” policy with respect to a period of military leave, from May 1, 2017 through the date of the judgment.²

2. Appointing Casey Clarkson as the representative for both Classes

3. Appointing R. Joseph Barton of Block & Leviton and Michael

J. Scimone of Outten & Golden as Co-Lead Class Counsel and Plaintiff's

² Excluded from the Classes are persons who previously reached settlements with or judgments against Defendants resolving or releasing any claims arising during the Class Period under USERRA related to any of the claims in this lawsuit.

1 other counsel as additional Class Counsel.

2 BACKGROUND

3 Casey Clarkson worked for Horizon as a pilot from November 2013 until
 4 early November 2017 and has since worked as a pilot for Alaska. ECF No. 31
 5 (“Compl.”) & ECF No. 32 (“Answ.”) ¶ 13. From November 2013 through June 30,
 6 2018, he was a member of the Washington National Guard and took periods of
 7 military leave from Alaska and Horizon to perform his military duties. Clarkson
 8 Decl. ¶ 3; Compl. & Answ. ¶¶ 43-44, 48-49.

9 *The Paid Leave Class Claim:* Count IV alleges that by failing to provide the
 10 Paid Leave Class with paid short-term military leave while providing paid leave
 11 for other comparable forms of leave, Alaska and Horizon violated USERRA
 12 § 4316(b). Compl. ¶¶ 79-86; *Clarkson v. Alaska Airlines, Inc.*, No. 19-CV-0005,
 13 2019 WL 2503957, at *7 (E.D. Wash. June 17, 2019). Military leave at Alaska and
 14 Horizon was unpaid for all employees. Alaska Dep. at 70:8-11 & 89:3-6; Horizon
 15 Dep. at 47:6-48:1. But Alaska and Horizon provided paid leave for other short-
 16 term leave including jury duty. Alaska Dep. at 68:7-69:20 & 70:12-73:14; Horizon
 17 Dep. at 48:8-49:8. This was true across all work groups. *Id.*; Exs. 17 & 18.

18 *The Virtual Credit Class Claims:* In May 2017, Horizon implemented a
 19 “Virtual Credit Policy” that credited pilots and flight attendants taking military
 20 leave with 2.30 hours per day for flight attendants and 2.45 or 2.75 hours per day

1 for pilots (depending on type of plane), despite a minimum guarantee of 4 hours
2 per day when flying and often receiving more credit for longer trips. Horizon Dep.
3 at 123:6-9, 123:24-124:2, 124:16-125:1, 132:19-133:15, 171:11-173:8; Ex. 4 ¶¶ 5-
4 8; Exs. 11 at ALASKA_CLARKSON 1673; Exs. 12, 13 & 14. If the credit
5 differential for leave caused a servicemember to be unable to meet the monthly
6 minimum, the policy then “forces [the servicemember] into a reserve holder status
7 instead of the line holder status” after he returned from military leave. Clarkson
8 Decl. Ex. C. As a result, the Department of Labor (“DOL”) found that this policy
9 violated DOL regulations governing USERRA reemployment rights regarding
10 seniority and status. *Id.* The Complaint alleges that this policy violated three
11 USERRA provisions. Count I alleges that the Policy violated USERRA §§ 4312
12 and 4313 because employees were not reemployed with the status or position that
13 they would have held but for military service. Compl. ¶¶ 61-69. Count II alleges
14 that the Policy violated USERRA § 4316(a) by denying the Class the seniority and
15 related rights and benefits that they would have had if they had remained
16 continuously employed. *Id.* ¶¶ 70-74. Count III alleges that Horizon violated
17 USERRA § 4316(c) by applying the Policy to discharge employees from a status
18 or position following military leave of at least 31 days without cause. *Id.* ¶¶ 75-78.

19 ARGUMENT

20 Certification of a class requires meeting the four prerequisites of Rule 23(a)

PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION

1 and a subsection of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591,
 2 613-14 (1997). While class certification issues may “entail some overlap with the
 3 merits of the plaintiff’s underlying claim,” those “[m]erits questions may be
 4 considered to the extent—but only to the extent—that they are relevant to
 5 determining whether the Rule 23 prerequisites for class certification are satisfied.”
 6 *Amgen Inc. v. Conn. Ret. Plans and Tr. Funds*, 568 U.S. 455, 466 (2013). A district
 7 court does not have discretion to deny class certification if Rule 23’s requirements
 8 are met. *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 398
 9 (2010). Both Classes satisfy all the requirements of Rules 23(a) and 23(b)(3).

10 **I. The Classes are Objectively and Properly Defined**

11 A class is properly “defined by an objective criterion.” *Briseno v. ConAgra*
 12 *Foods, Inc.*, 844 F.3d 1121, 1124 (9th Cir. 2017). A class definition is based on
 13 objective criteria when the definition is “not based on class members’ feelings or
 14 beliefs.” *Wilcox v. Swapp*, 330 F.R.D. 584, 596 (E.D. Wash. 2019) (rejecting
 15 arguments a class definition needs to frame the scope of defendants’ liability or
 16 identify all members of the class). Here, the Paid Leave Class is based on objective
 17 criteria: whether the person (1) is a current or former employee of Alaska or
 18 Horizon, and (2) took short-term military leave on or after October 10, 2004.
 19 Compl. ¶ 17. The Virtual Credit Class is also based on objective criteria: whether
 20 the person (1) is a current or former Horizon employee, and (2) took military leave

1 on or after May 1, 2017 subject to the Virtual Credit Policy. *Id.* All pilots and flight
 2 attendants who took military leave were subject to the Virtual Credit Policy. Ex. 13
 3 & Ex. 14; Horizon Dep. at 148:2-5. For the Paid Leave Class, Defendants have
 4 produced the data necessary to identify the employees of Alaska and Horizon who
 5 took short-term military leave since October 10, 2004. Ex. 3 ¶¶ 5-6 & Ex. B; Ex. 4
 6 ¶¶ 11-12 & Ex. B. For the Virtual Credit Class, Horizon has data identifying the
 7 pilots and flight attendants subject to the Virtual Credit Policy since May 1, 2017.
 8 Ex. 4 ¶¶ 11-12 & Ex. B; Horizon Dep. at 140:1-143:24; 154:5-156:6, 164:1-8,
 9 202:19-203:4. Thus, both Classes are sufficiently and properly defined.

10 **II. The Requirements of Rule 23(a) are Satisfied**

11 Rule 23(a) requires: (1) the class is so numerous that joinder of all members
 12 is impracticable; (2) there are questions of law or fact common to the class; (3) the
 13 claims or defenses of the representative parties are typical of the claims or defenses
 14 of the class; and (4) the representative parties will fairly and adequately protect the
 15 interests of the class. Fed. R. Civ. P. 23(a). Both Classes satisfy all these criteria.

16 **A. The Classes are so Numerous that Joinder is Impracticable**

17 Rule 23(a) does not require any “minimum number of class members,” but
 18 “a class consisting of forty or more members is presumed to be sufficiently
 19 numerous.” *Saucedo v. NW Mgmt. & Realty Servs., Inc.*, 290 F.R.D. 671, 676
 20 (E.D. Wash. 2013) (Rice, J.). Courts have certified smaller classes based on factors

1 such as geographic dispersion, financial resources, or request for injunctive relief
 2 and judicial economy. *McCluskey v. Trs. of Red Dot Corp. Employee Stock*
 3 *Ownership Plan & Tr.*, 268 F.R.D. 670, 673-74 (W.D. Wash. 2010) (certifying
 4 class of 27). Defendants identified 278 Alaska and Horizon employees who took
 5 military leave for a period not exceeding 15 consecutive days during a portion of
 6 the Class Period. Ex 8 at No. 11.³ Using Alaska’s definition of short-term leave of
 7 30 days, there are actually 189 more employees in the Paid Leave Class. *Id.*; Siegel
 8 Decl. ¶¶ 2, 4; Alaska Dep. at 121:12-20. For the Virtual Credit Class, Horizon has
 9 not yet provided data on flight attendants, Cheng Decl. ¶ 3, but 75 pilots were
 10 provided virtual credit hours for military leave between May 1, 2017 and
 11 November 30, 2019. Ex. 8 at No. 9. Of the pilots, 73 received less than 4.5 virtual
 12 credit hours for any day of military leave. *Id.* at No. 10. Even if this Class has less
 13 than 40 members, the Complaint requests declaratory relief and the class is
 14 geographically dispersed. Answ. ¶ 21; Siegel Decl. ¶¶ 3 & 7; Compl. Prayer for
 15 Relief ¶¶ A, B, D. Thus, Rule 23(a)(1) is met.

16 **B. There are Common Questions of Law and Fact**

17 “To satisfy Rule 23(a)(2) ..., ‘[e]ven a single [common] question’ will do.”

18 *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1133 (9th Cir. 2016). Not “every
 19 question in the case, or even a preponderance of questions,” need be “capable of

20 ³ Defendants inexplicably provided responses for only a portion of the class period.

1 classwide resolution.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 544 (9th
 2 Cir. 2013). A common question does not have to be one that “will be answered, on
 3 the merits, in favor of the class.” *Amgen*, 568 U.S. at 459. Commonality “means
 4 that the class members’ claims ‘must depend upon a common contention’ and that
 5 the ‘common contention, moreover, must be of such a nature that it is capable of
 6 classwide resolution – which means that determination of its truth or falsity will
 7 resolve an issue that is central to the validity of each one of the claims in one
 8 stroke.”” *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1153 (9th Cir.
 9 2016) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). The
 10 existence of a policy satisfies Rule 23(a)(2). *Stockwell v. City and County of San
 11 Francisco*, 749 F.3d 1107, 1116 (9th Cir. 2014) (reversing denial of certification
 12 where plaintiffs “challeng[ed] a single policy” that “adversely affected them”).

13 The claim for the Paid Leave Class rests on two common issues: (1) is paid
 14 leave one of the “rights and benefits” that must be provided equally to employees
 15 on military leave under USERRA § 4316(b) when other comparable forms of leave
 16 are paid; (2) do Defendants provide other short-term paid leave that is comparable
 17 to short-term military leave. *Clarkson*, 2019 WL 2503957, at *7. The first issue is
 18 a legal one which will have a common answer. The second issue will assess the
 19 factors in the DOL regulations addressing whether two leaves are comparable:
 20 duration, purpose, and voluntariness of the leave. *Id.* at *7 (citing 20 C.F.R.

1 § 1002.150(b)). As Defendants' own corporate representatives conceded, those
 2 factors do not vary between groups. Alaska Dep. at 102:22-103:2, 105:9-16, 106:4-
 3 109:9, 121:16-20; Horizon Dep. at 58:1-16, 62:12-63:3, 65:12-67:17. Thus, the
 4 relevant facts are not unique to specific employees or groups but on common
 5 policies, and are subject to common proof.

6 The Paid Leave Class was subjected to materially the same policies. Short-
 7 term military leave for *all* employees at Alaska and Horizon is and has been unpaid
 8 since at least 2004. Alaska Dep. at 70:8-11 & 89:3-6; Horizon Dep. at 47:6-48:1;
 9 Exs. 17 & 18. Yet, at the same time, Alaska and Horizon provided their employees
 10 with various types of paid leave that courts have determined are comparable:⁴
 11 Alaska employees in the Paid Leave Class were provided paid leave for jury duty,
 12 sick leave, vacation, and bereavement. Alaska Dep. 68:7-69:20 & 70:12-73:14.
 13 Horizon employees in the Paid Leave Class received pay for the same leaves.
 14 Horizon Dep. at 48:8-49:8.

15 The Virtual Credit Policy claims (Counts I-III) rest on two common issues.

16 *First*, whether the Virtual Credit Class members had to be credited or work a

17 ⁴ *E.g., Waltermyer v. Aluminum Corp. of Am.*, 804 F.2d 821, 825 (3d Cir. 1986)
 18 (finding military leave comparable to jury duty); *Duffer v. United Cont'l Holdings,*
 19 *Inc.*, 173 F. Supp. 3d 689, 704 (N.D. Ill. 2016) (finding military leave comparable
 20 to jury duty and sick leave).

1 certain number of hours to keep their Regular Line Holder status. *Second*, whether
 2 the Virtual Credit Policy failed to credit these employees with the same amount of
 3 hours if they been employed at Horizon instead of on military leave. Pilots must
 4 work for at least 70-73 hours during a bid period to maintain their minimum pay
 5 guarantee for Regular Line Holders. Horizon Dep. at 136:4-14. Flight attendants
 6 must work for or be credited at least 69.5 hours to maintain their minimum pay
 7 guarantee for Regular Line Holders. *Id.* at 212:7-10. While Horizon credited pilots
 8 and flight attendants with a *minimum of four hours per flight*, when they were on
 9 military leave, Horizon only credited pilots with 2.45-2.75 hours for each day
 10 (between May 2017 and Jan. 2018) or 2:36-4:45 hours each day (after Jan. 2018)
 11 and credited flight attendants with 2.3 hours per day (after from May 2017). *Id.* at
 12 132:19-133:15, 161:11-163:1, 171:11-173:8; Exs. 11, 12, 13 & 14. As the facts
 13 necessary to answer the central questions for the Virtual Credit Class will be based
 14 on common policies governing number of virtual credit hours that Horizon
 15 provided for military leave, these questions will be subject to common proof.

16 The Paid Leave claim depends primarily on two sources of evidence: First,
 17 written policies, consisting of collective bargaining agreements (“CBAs”), which
 18 are the only source of rules governing the relevant leaves for union employees, or
 19 employee handbooks (*e.g.*, Exs. 15 & 16).⁵ Alaska Dep. at 38:18-24; Horizon Dep.

20 ⁵ “[T]here is one [leave] policy for nonrepresented work groups at Horizon.”

1 at 46:23-47:3. Second, Defendants' data identifies the dates and duration of the
 2 leaves taken by class members. Ex. 3 at Ex. B; Ex. 4 at Ex. B. The material
 3 similarity of the relevant provisions of the CBAs across the work groups make
 4 these issues resolvable using common evidence. Exs. 17 & 18. Likewise, the
 5 Virtual Credit claims rely on: (1) two CBAs setting out the Virtual Credit Policy,
 6 and (2) Defendants' data regarding the virtual credit hours class members received
 7 during military leave and the employees' status. Exs. 13 & 14; Ex. 4 ¶¶ 5-8 & *id.* at
 8 Ex. B. The commonality requirement of Rule 23(a)(b) is met.

9 **C. The Typicality Requirement of Rule 23(a) is Met**

10 Rule 23(a)(3) requires that "the claims or defenses of the representative
 11 parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3).
 12 "Typicality refers to the nature of the claim or defense of the class representative,
 13 and not to the specific facts from which it arose or the relief sought." *Wilcox*, 330
 14 F.R.D. at 591. "Under the rule's permissive standards," claims "are 'typical' if they
 15 are reasonably coextensive with those of absent class members; they need not be
 16 substantially identical." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014).

17 **1. Plaintiff's Claims are Typical of the Classes**

18 "The Ninth Circuit is clear that when a policy or practice is at issue that

19 Horizon Dep. at 43:7-16. Horizon has not yet produced this document. *See id.* at
 20 45:17-52:4; Cheng Decl. ¶ 2.

1 affects all class members, typicality exists.” *Torres v. Mercer Canyons, Inc.*, No.
 2 14 CV 03032, 2015 WL 1641519, at *5 (E.D. Wash. Apr. 8, 2015) (citing *Parsons*,
 3 754 F.3d at 685 and *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)). “[I]t
 4 is sufficient for typicality if the plaintiff endured a course of conduct directed
 5 against the class.” *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017)
 6 (“[T]ypicality is not primarily concerned with whether each person in a proposed
 7 class suffers the same type of damages”). For both Classes, Plaintiff’s claims
 8 challenge policies and a course of conduct based on the same legal theories.
 9 For the Paid Leave Class, Count IV alleges that “both Horizon and Alaska apply a
 10 uniform policy and practice of refusing to pay servicemember-employees their
 11 regular wages or salaries during periods of short-term military leave, while paying
 12 the regular wages or salaries of its employees who take comparable forms of non-
 13 military leave” in violation of USERRA § 4316(b). *Clarkson*, 2019 WL 2503957,
 14 at *2. This claim requires determining whether short-term military leave is
 15 comparable to other forms of leave. *Id.* at *7. Alaska and Horizon provide unpaid
 16 leave for military leave to all members of the Paid Leave Class, but provide paid
 17 leave for comparable leaves across workgroups. Alaska Dep. at 68:7-69:20, 70:8-
 18 73:14 & 89:306; Horizon Dep. at 47:6-49:8;Exs. 17 & 18.

19 Counts I-III challenge Horizon’s Virtual Credit Policy to servicemembers.
 20 *Clarkson*, 2019 WL 2503957 at *4-6; Compl. ¶¶ 61-78. Horizon provided pilots

1 with virtual credit hours of either 2.45 or 2.75 hours (between May 1, 2017 and
 2 Feb. 2018) and between 2:36 and 4:45 hours (after Feb. 2018) and flight attendants
 3 2.3 hours for each day of their military leave – i.e., all less than their daily flying
 4 minimum credit of 4 hours. Exs. 11, 12, 13, & 14; Horizon Dep. at 171:11-172:4.
 5 While the policy for flight attendants and pilots were in two different CBAs, they
 6 only differed in the amount of credit provided. Horizon Dep. at 148:18-149:2.
 7 After February 2018, the policies were the same and the only change was an
 8 increased credit for pilots (the credit for flight attendants remained the same). *Id.* at
 9 162:23-163:1. While the amount of credit differed, the claims depend on the
 10 legality of the Policy applied to servicemembers who took military leave. *See*
 11 *Clarkson*, 2019 WL 2503957, at *4-6. As the legal theories for underlying the
 12 claims of each of the two Classes are substantively identical, and the relevant
 13 factual circumstances and practices are materially the same, typicality is met.

14 **2. Defendants Assert No Unique Defenses Against Plaintiff**

15 “Defenses unique to a class representative counsel against class certification
 16 only where they ‘threaten to become the focus of the litigation.’” *Rodriguez v.*
 17 *Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010). Defendants have admitted that no
 18 facts support their Second, Third, Eighth, and Ninth Affirmative Defenses. Ex. 7 at
 19 Nos. 3, 4, 6 & 7. Their remaining “Affirmative Defenses” are not affirmative
 20 defenses, and in any event, would apply equally to claims of all members of the

1 Classes and are none of them are unique to Clarkson. *Id.*; Answ. at 19-21. Thus,
 2 none of those “defenses” would defeat class certification. Ex. 7 at No. 5.

3 **D. Plaintiff and his Counsel Will Adequately Represent the Classes**

4 Determining whether a class representative will fairly and adequately protect
 5 the interest of the class under Rule 23(a)(4) involves resolving two questions: “(1)
 6 Do the representative plaintiffs and their counsel have any conflicts of interest with
 7 other class members, and (2) will the representative plaintiffs and their counsel
 8 prosecute the action vigorously on behalf of the class?” *Staton v. Boeing Co.*, 327
 9 F.3d 938, 957 (9th Cir. 2003). Plaintiff and his counsel meet both requirements.

10 **1. There is no Evidence of Conflict**

11 “Only conflicts that are fundamental to the suit and that go to the heart of
 12 the litigation prevent a plaintiff from meeting the Rule 23(a)(4) adequacy
 13 requirement.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 942 (9th
 14 Cir. 2015) (quoting 1 William B. Rubenstein et al., *Newberg on Class Actions* §
 15 3.58 (5th ed. 2011)). Denial of class certification is not appropriate based on trivial
 16 or “speculative conflicts.” *Id.* There is no conflict where the class is “not divided
 17 into conflicting discrete categories” and where “each potential plaintiff has the
 18 same problem.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1021 (9th Cir. 1998).
 19 Here, there is no conflict.

20 For both the Paid Leave claim and the Virtual Credit Claims, Plaintiff was

1 subject to substantially the same policies at Alaska and Horizon as the rest of the
 2 Classes. *Supra* I.B & I.C. As Count IV seeks to pay employees for what has been
 3 unpaid military leave, no member of the Paid Leave Class would be economically
 4 harmed by the relief sought. Compl. at Prayer for Relief ¶ E. The Virtual Credit
 5 claims challenges a policy that credits servicemembers with fewer hours than the
 6 amount they would have worked had they not been on military leave. Horizon Dep.
 7 at 138:13-139:18. Both pilots and flight attendants who worked were credited with
 8 a *minimum of four hours* (and could be credited more), but far less if they took
 9 military leave. *Compare id.* at 171:11-173:8 with *id* at 132:19-133:11 & 162:13-
 10 163:1. That difference could result in a servicemember having their status reduced.
 11 *Id.* at 139:19-25, 164:1-8. Thus, both Classes share Plaintiff's interest in ensuring
 12 that Defendants comply with USERRA's requirements.

13 **2. Plaintiff will Vigorously Prosecute the Claims**

14 In this Circuit, “[t]he threshold of knowledge required to qualify a class
 15 representative is low; a party must be familiar with the basic elements of her
 16 claim.” *McGuire v. Dendreon Corp.*, 267 F.R.D. 690, 697 (W.D. Wash. 2010). It is
 17 enough if plaintiff has read the complaint, “understands he has a fiduciary duty to
 18 represent the class,” has participated in discovery and “is willing to spend as much
 19 time as necessary to see the litigation through.” *Id* at 696. *Allen v. Hyland's Inc.*,
 20 300 F.R.D. 643, 663 (C.D. Cal. 2014) (finding plaintiffs adequate who “made

1 themselves available for depositions and demonstrated familiarity with the case.”)).
 2 Before this litigation began, Mr. Clarkson filed an administrative complaint with
 3 the DOL and sought documents pursuant to ERISA § 104(b). Clarkson Decl. ¶ 9.
 4 He provided documents to counsel and assisted with the filing of the Complaint,
 5 reviewed the initial and Amended Complaint, assisted counsel, and participated in
 6 discovery, including responding to Defendants’ interrogatories and document
 7 requests. *Id.* ¶¶ 12-13, 16. He understands and is prepared to fulfill his duties as
 8 class representatives to vigorously pursue the claims on behalf of the Classes. *Id.*
 9 ¶ 15. Therefore, Mr. Clarkson is more than meets the requirement of Rule 23(a)(4).

10 **3. Plaintiff’s Counsel are More Than Adequate**

11 “[A]dequacy of counsel is considered under Rule 23(a)(4) and Rule 23(g).”

12 *Allen*, 300 F.R.D. at 664 (citing *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d
 13 1117, 1122–23 (9th Cir. 2014)); *Wilcox*, 330 F.R.D. at 599. Rule 23(g) assesses
 14 “(i) the work counsel has done in identifying or investigating potential claims in
 15 the action; (ii) counsel’s experience in handling class actions, other complex
 16 litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge
 17 of the applicable law; and (iv) the resources that counsel will commit to
 18 representing the class.” Fed. R. Civ. P. 23(g)(1)(A).

19 Plaintiff’s proposed Co-Lead Counsel readily meet these factors: Block &
 20 Leviton LLP partner R. Joseph Barton has litigated complex employee benefits

1 class actions for more than 18 years and USERRA class actions for more than 8
 2 years. Barton Decl. ¶¶ 4-9. Outten & Golden LLP partner Michael J. Scimone has
 3 extensive experience litigating employment and USERRA class actions. Scimone
 4 Decl. ¶ 7. Both firms have been previously appointed class counsel by Courts in
 5 this District. *See Swapp*, 330 F.R.D. at 599 (recognizing Block & Leviton's
 6 "extensive class action experience"); *Hall v. L-3 Commc'ns Corp.*, No. 15 CV
 7 00231, 2019 WL 3845460, at *3 (E.D. Wash. Aug. 2, 2019) (appointing Outten &
 8 Golden as class counsel). Plaintiff's other counsel also have significant relevant
 9 experience. Romer-Friedman Decl. ¶ 8; Jarrard Decl. ¶¶ 5, 10; Crotty Decl. ¶¶ 4-6.
 10 Thus, Plaintiffs' counsel readily satisfy Rule 23(a)(4) and Rule 23(g).

11 **III. The Claims Meet the Requirements of Rule 23(b)(3)**

12 Rule 23(b)(3) applies when (1) "common questions predominate over any
 13 questions affecting only individual members," and (2) "a class action is superior to
 14 other available methods for the fairly and efficiently adjudicating the controversy."
 15 Fed. R. Civ. P. 23(b)(3). Here, the claims meet Rule 23(b)(3).

16 **A. The Predominance Requirement is Met**

17 Predominance "asks whether the common, aggregation-enabling, issues in
 18 the case are more prevalent or important than the non-common, aggregation-
 19 defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036,
 20 1045 (2016). Predominance exists when common questions "present a significant

1 aspect of the case and . . . can be resolved for all members of the class in a single
 2 adjudication.” *Walker v. Life Ins. Co. of the Sw.*, 953 F.3d 624, 630 (9th Cir. 2020)
 3 (affirming Rule 23(b)(3) certification); *Just Film, Inc.*, 847 F.3d at 1120 (finding
 4 predominance where claims “arise from a course of conduct that impacted the
 5 class”). “[A]ssessment of predominance “begins... with the elements of the
 6 underlying cause of action.” *Walker*, 953 F.3d at 630. Predominance “does
 7 not require a plaintiff seeking class certification to prove that each ‘elemen[t] of
 8 [her] claim [is] susceptible to classwide proof.”” *Amgen*, 568 U.S. at 469. The “text
 9 of Rule 23(b)(3) itself contemplates that [] individual questions will be present.”
 10 *Messner v. Northshore U. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012); *Tyson*
 11 *Foods*, 136 S. Ct. at 1045 (explaining other “important” individual issues “will
 12 have to be tried separately”). And it is “well settled” that “damage calculations
 13 alone cannot defeat certification.” *Vaquero*, 824 F.3d at 1155.

14 Here, the central questions for the Paid Leave Class are whether paid leave
 15 are among the “rights and benefits” protected by USERRA § 4316(b) and whether
 16 short-term military leave is comparable to jury duty or bereavement leave. *Supra*
 17 I.B. Determining whether “two types of leave are comparable” considers “the
 18 duration of the leave [as] the most significant factor” and “other factors such as the
 19 purpose of the leave and the ability of the employee to choose when to take the
 20 leave.” 20 C.F.R. § 1002.150(b). These factors do not require individualized

1 determinations as to specific class members. The first and most significant factor
2 of duration can be analyzed based on leave data produced by Defendants. Alaska
3 Dep. at 121:16-20; Horizon Dep. at 59:8-13; Ex. 3 at Ex. B; Ex. 4 at Ex. B. The
4 second factor, purpose, will turn on the overall purpose of each type of leave,
5 which does not differ based on the person who takes the leave. Alaska Dep. at
6 106:4-109:9; Horizon Dep. at 62:12:63:3. The third factor, ability to choose to take
7 leave, will turn on the policies setting forth the terms of leave. Alaska Dep. at
8 102:22-103:2; *id.* at 105:9-16; Horizon Dep. at 65:23-67:17; Ex. 7 at No. 1. These
9 claims challenge the same conduct that harmed all Class Members in the same
10 way: none was paid for periods of short-term military leave. Alaska Dep. at 70:8-
11 & 89:3-6; Horizon Dep. at 47:6-48:1; Exs. 17 & 18. The common conduct,
12 harm, and sources of proof ensure that common issues will predominate over any
13 individual liability or damages issues.

14 For the Virtual Credit Class, the central questions concern whether Class
15 members must work a certain number of hours (70-73 for pilots and 69.5 for flight
16 attendants) a month to keep their minimum pay guarantees and whether Horizon's
17 Virtual Credit Policy failed to provide them with adequate virtual credit hours
18 during a period of military leave so that they are not relegated to a reduced status.
19 *Supra* I.B; Horizon Dep. at 84:23-85:7, 85:25-86:3 & 138:12-142:1. The answers
20 to these questions will turn on Horizon's polices governing the number of hours

1 pilots and flight attendants need, the minimum pay guarantees and the number of
 2 virtual credit hours awarded Class. *Supra* I.B; *see* Horizon Dep. at 140:1-143:24,
 3 155:6-156:6; Exs. 11, 12, 13, & 14. These questions do not require individualized
 4 liability determinations as to specific Class Members.

5 Accordingly, the important issues of law and fact common to all members of
 6 the Classes predominate over any individual issues.

7 **B. The Superiority Requirement is Met**

8 Superiority “requires the court to determine whether maintenance of this
 9 litigation as a class action is efficient and whether it is fair.” *Wolin v. Jaguar Land*
 10 *Rover N.A., LLC*, 617 F.3d 1168, 1175–76 (9th Cir. 2010). Rule 23(b)(3) identifies
 11 the following factors: (A) class members’ interest in individually controlling the
 12 prosecution or defense of separate actions; (B) the extent and nature of any other
 13 litigation concerning the controversy already begun by class members; (C) the
 14 desirability of concentrating the litigation of the claims in the particular forum; and
 15 (D) the likely difficulties in managing of a class action. Fed. R. Civ. P. 23(b)(3).

16 The first factor is met “[w]here recovery on an individual basis would be
 17 dwarfed by the cost of litigating on an individual basis.” *Wolin*, 617 F.3d at 1175–
 18 76.⁶ Here, an individual Class member’s recovery on either set of claims is likely

19 ⁶ Defendants have not produced data regarding the compensation of the members
 20 of the Classes. Ex. 9 at No. 1; Ex. 10 at No. 7. Defendants have not produced data

1 relatively small, as the claims are only for short-term military leave or loss of pay
2 and benefits due to temporary demotions from Regular Line Holder status. Second,
3 there is no other pending litigation. Cheng Decl. ¶ 7. Third, concentrating the
4 claims in this District is desirable as both Alaska and Horizon conduct business in
5 this District and are headquartered in Washington, Horizon is a Washington
6 corporation, and many class members, including Plaintiff, are located here. Am.
7 Compl. & Answ. ¶¶ 11, 12, 14 & 15. Finally, there is a “well-settled presumption
8 that courts should not refuse to certify a class merely on the basis of manageability
9 concerns.” *Briseno*, 844 F.3d at 1128 (citing *Mullins v. Direct Dig., LLC*, 795 F.3d
10 654, 663 (7th Cir. 2015) and *In re Visa Check/MasterMoney Antitrust Litig.*, 280
11 F.3d 124, 140 (2d Cir. 2001) (Sotomayor, J.) (listing management tools)). Nothing
12 in this case is so complex that it would be unmanageable as a class action at trial.
13 Thus, a class action is a superior method of resolving the Classes’ claims.

14 **CONCLUSION**

15 For the foregoing reasons, Plaintiff’s motion should be granted.

16
17
18
19 sufficient to determine whether pilots or flight attendants were harmed by the
20 Virtual Credit Policy although such data existed. Horizon Dep. at 202:18-203:4.

1 Dated: May 20, 2020

Respectfully submitted,



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PLAINTIFF'S MOTION FOR
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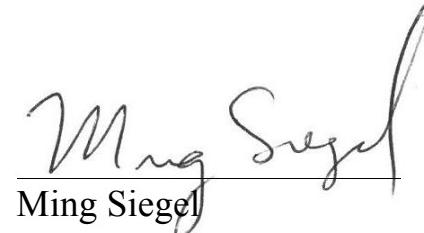
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1 **CERTIFICATE OF SERVICE**

2 I certify that on May 20, 2020, I caused the foregoing to be electronically
3 filed with the Clerk of the Court using the CM/ECF system, which sent notification
4 of such filing to all counsel of record.

5 
6 _____
7 Ming Siegel

PLAINTIFF'S MOTION FOR
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